

ADOPTED

10/1/92

OWNER - SURETY COMPLETION AGREEMENT

This Agreement (the "Agreement") made between ST. PAUL MERCURY INSURANCE CO., a Minnesota corporation (the "Surety"), and the BOSTON REDEVELOPMENT AUTHORITY, a public body politic and corporate (the "BRA"). Collectively, the Surety and the BRA shall hereinafter be referred to as the "Parties".

WHEREAS, the BRA entered into a certain contract (the "Original Construction Contract") which is defined herein to include the contract, dated April 18, 1992 (the Invitation to Bidders, Bid Documents, Plans and other documents incorporated as part thereof) and all change orders agreed upon and executed to date with John Mahoney Construction Co., Inc. ("Mahoney Construction") for the construction of a project known as Site Preparation Contract Nos. V-2, V-4, W-4 and X-2 (Combined), Charlestown Project No. Mass. R-55, City of Boston, Massachusetts (the "Project"), and whereas the entire Original Construction Contract is incorporated herein by reference and is, in part, attached hereto as Exhibit "A"; and

WHEREAS, the Surety issued a "Performance Bond" No. 400 JH 1505 (the "Bond") to the BRA, being the "Obligee", covering said Original Construction Contract, with Mahoney Construction as the "Principal"; a copy of said Bond is attached hereto as Exhibit "B"; and

WHEREAS, Mahoney Construction has given notice to the Surety that it is unable to proceed under said Original Construction Contract; and

WHEREAS, the BRA has declared Mahoney Construction in default and has notified the Surety to respond under the Bond;

and

WHEREAS, the Surety is ready, willing and able to discharge its obligation to the BRA under the Bond as provided hereinbelow; and

WHEREAS, the Surety has made arrangement to engage M. Susi & Sons, Inc. ("Susi") to complete the Project; and

WHEREAS, the BRA is willing to accept Susi as the completing contractor and to recommit itself to be bound by the terms and conditions of the Original Construction Contract as modified herein and to rededicate the Unpaid Contract Balance, as hereinafter defined, to the completion of the Project and the fulfillment of the Original Construction Contract; and

WHEREAS, the BRA is willing to accept the terms of this Agreement as the method by which the Surety shall fully satisfy its performance obligations to BRA under the Bond,

NOW, THEREFORE, in consideration of the mutual promises, undertakings, agreements and covenants herein contained, the validity and sufficiency of which is expressly acknowledged by each of the Parties.

I. BRA AGREES:

A. That under and subject to the terms of the Original Construction Contract, the present status of the contract funds is as follows:

Original Contract Amount	\$3,872,757.49
Change Order #1	93,643.51
Adjusted Contract Price	3,966,401.00
Payments to Date	<u>610,295.15</u>
UNPAID CONTRACT BALANCE	\$3,356,105.05
Retainage (Through Req. #3)	<u>32,120.79</u>
Unpaid Contract Balance Less Retainage	\$3,323,985.06

- B. To and does hereby reaffirm the Original Construction Contract and rededicate the Unpaid Contract Balance to the completion of the Project and fulfillment of the Original Construction Contract.
- C. To and does hereby accept this Agreement as performance of the Surety's obligation under the Original Construction Contract to make an unequivocal notice of the Surety's election to complete the Project and BRA does hereby accept Susi as the contractor to complete the Project on behalf of the Surety pursuant to the Original Construction Contract.
- D. To pay the Surety for the work performed under the Original Construction Contract in accordance with the procedures and the payment schedule provided by the Original Construction Contract.
- E. To pay the Surety upon completion of the Original Construction Contract, including all punchlist items, and acceptance of the Project by the BRA all remaining funds due and payable under the contract, including but not limited to retainage.
- F. To provide and send to the Surety or its designated representative copies of documents and other information as may be reasonably necessary for the Surety to determine its liability pursuant to the Bond and this Agreement.
- G. To afford the Surety and its authorized representatives complete access to the Project at any and all reasonable times in order for the Surety to

determine independently the extent of its liability hereunder.

H. That all changes and modifications to the Original Construction Contract made after the date of this Agreement:

1. Shall be made pursuant to the terms of the Original Construction Contract;
2. Shall be the exclusive responsibility of the BRA if such changes increase the Project cost; or
3. Shall result in an Adjusted Contract Price if said changes are deduct or credit change orders.

II. THE SURETY AGREES:

- A. To and does hereby acknowledge and reaffirm that the Bond to the BRA remains in full force and effect.
- B. To cause Susi to perform all the work and supply all labor, equipment and material required to promptly complete the Project in accordance with the terms and conditions of the Original Construction Contract, including without limiting the foregoing, compliance with the Boston Residents Construction Employment Standards (the so-called Boston Residents Jobs Policy) and Minority and Women Business Enterprise Requirements, all as set forth in such contract.
- C. To make application for payments to BRA by delivering itemized statements in the form required by the Original Construction Contract.
- D. To pay Susi, as work progresses, and by the date on

which the Surety is required to make payment to Susi under a separate contract between the Surety and Susi (the "Completion Contract"), the cost of all work required to be performed and all materials required to be supplied by Susi in carrying out its obligations under the Completion Contract, regardless of the fact that such cost may exceed the sums paid to the Surety by the BRA, provided the total paid to Susi in excess of the Unpaid Contract Balance plus retainage does not exceed the amount set forth in paragraph III A. below. In the event of any conflict between the terms and conditions of the Completion Contract and those of the Original Construction Contract, as may be amended, the terms of the Original Construction Contract, as may be amended, shall apply and govern in all respects.

- E. To pay to the BRA all reasonable and verified costs incurred as a result of the default of the Principal, Mahoney Construction, including (1) costs incurred under a separate Memorandum of Understanding, dated September 10, 1992, by and between the BRA and the Middlesex Corporation for providing interim emergency services on a "time and materials" basis; and (2) costs incurred under a separate Contract for Engineering Services, originally dated March 16, 1992 and as amended, by and between the BRA and Bryant Associates for additional engineering services provided in connection with the Project.

III. GENERAL TERMS AND CONDITIONS

- A. The provisions of Section II hereinabove to the contrary notwithstanding, under no circumstances shall the Surety's net liability under this Agreement or the Bond exceed in the aggregate, the sum of \$3,872,747.49 (the penal sum of the Bond) and the costs of any adjustments to the Original Construction Contract, including change orders or overruns agreed upon and executed by the Parties after the date of this Agreement.
- B. The Surety represents and warrants to the BRA that it has the right and full authority to adjust, settle or compromise any and all claims that the Principal, Mahoney Construction, may have against the BRA under, or arising out of, the Original Construction Contract, whether in the nature of contract claims or otherwise, without any limitations or exceptions in any way or to any extent. Further, the Surety represents and warrants to the BRA that it has not granted to, or reserved to, the Principal any rights to assert such claims, by written agreement or otherwise, prior to the date of this Agreement, nor shall the Surety assign any such rights to the Principal at any time after the date of this Agreement, by written agreement or otherwise, without the prior written consent of the BRA. The Parties agree that nothing in this Agreement is intended to affect in any way any claims that the Surety may have against the BRA under the Original

Construction Contract as to which claims the rights of the Parties are expressly reserved.

- C. All notices and communications required by or pertaining to this Agreement shall be sent to the Parties at the following addresses:

1. To Susi at: M. Susi & Sons, Inc.
14 Westwood Street
Dorchester, MA 02121
ATTN: Mario Susi
2. To the BRA at: Boston Redevelopment Authority
One City Hall Square, 9th Floor
Boston, MA 02201
ATTN: Paul Reavis, Assistant
Director for Engineering & Design
Services

With a copy
to:

Kevin J. Morrison, Esq.
Deputy General Counsel
Boston Redevelopment Authority
One City Hall Square, 9th Floor
Boston, MA 02201

3. To the Surety
at:

St. Paul/Seaboard
Law and Claims Department
Burnt Mills Road & Route 206
P.O. Box 751
Bedminster, NJ 07921-0751
ATTN: James Chelburg, Esq.

With a copy
to:

Paul R. Devin, Esq.
Peaboy & Arnold
50 Rowes Wharf
Boston, MA 02110

- D. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.
- E. Each Party hereto expressly warrants that it has the necessary authority to execute this Agreement on behalf of its governing board or board of directors, and that each signatory hereto has authority to

execute this Agreement on behalf of the respective named Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the last date appearing below.

BOSTON REDEVELOPMENT AUTHORITY

By: _____

Kane Simonian, Executive
Director

DATE: _____

ST. PAUL MERCURY INSURANCE CO., By
its Counsel

By: _____

Paul R. Devin, Esq.

DATE: _____

Exhibit A - Construction Contract.

Exhibit B - Performance Bond #400 JH 1506.

APPROVED AS TO FORM:

Chief General Counsel
Boston Redevelopment Authority

MEMORANDUM

October 1, 1992

TO: BOSTON REDEVELOPMENT AUTHORITY AND
PAUL BARRETT, DIRECTOR

FROM: PAUL REAVIS, ASSISTANT DIRECTOR FOR ENGINEERING & DESIGN
KEVIN MORRISON, DEPUTY GENERAL COUNSEL

SUBJECT: CHARLESTOWN STREETS COMBINED CONTRACT; COMPLETION
AGREEMENT WITH SURETY UNDER THE PERFORMANCE BOND

SUMMARY: Under the terms of the Performance Bond in connection with the combined Charlestown Streets reconstruction contract, St. Paul Mercury Insurance Company has assumed the obligations to complete the project and has designated Mario Susi and Sons, Inc. as the completion contractor.

On August 27, 1992, the BRA Director notified John Mahoney Construction Company (JMCC), the contractor for Charlestown Streets that it was in default on the combined Charlestown Streets contract. JMCC had left the site a second time and JMCC staff informed the BRA that the BRA must make other arrangements for emergency crews to secure the construction site.

On August 27, 1992, representatives of St. Paul Insurance; the Surety under the Performance Bond for JMCC, the contractor for Charlestown Streets, contacted the BRA by fax and certified mail. The substance of the letter attached stated that "Mahoney Construction has admitted to St. Paul that it is financially unable to proceed with the contract . . . or to pay the outstanding claims for payment of its subcontractor or suppliers." The letter went on to state that "no further contract funds be released . . . without the written consent and direction of St. Paul."

As a result of these two letters St. Paul has cooperated with the BRA to secure the site through Middelsex Construction Company. An emergency agreement was drafted and signed by all parties with all cost to be born by St. Paul.

Representatives of St. Paul Mercury reviewed all records related to the project and organized a rebid package which St. Paul distributed to six contractors. Mario Susi & Sons, Inc. was the contractor selected by St. Paul through this process. St. Paul presented a draft Owner-Surety Completion Agreement to the BRA on September 24, 1992. The latest draft of the agreement is attached. Authorization is requested for the signature of an agreement substantially in accord with the draft attached. All unit prices in the contract between the BRA and Mahoney will be honored. the BRA will continue to pay for unit prices at the rates specified in the BRA/Mahoney agreement. The bonding company with will be responsible for any increase in costs.

Appropriate votes follow:

VOTED: That actions of the Director in providing a notice of default to John Mahoney Construction Company Inc. and St. Paul Mercury Insurance Company, the Surety under the Performance Bond, for the combined Charlestown Streets reconstruction contract are hereby ratified, confirmed and approved in all respects.

VOTED: That the Memorandum of Understanding entered into as of September 11, 1992, by and between the Boston Redevelopment Authority and the Middlesex Corporation for the purpose of providing emergency services on "time and materials" basis in connection with the combined Charlestown Streets reconstruction contract is hereby ratified, confirmed and approved in all respects.

VOTED: That the Executive Director is hereby authorized to execute an Owner-Surety Completion Agreement by and between the Boston Redevelopment Authority and the St. Paul Mercury Insurance Company in connection with the completion of the combined Charlestown Streets reconstruction contract under the Performance Bond for the project.

**BOSTON
REDEVELOPMENT
AUTHORITY**

Raymond L. Flynn
Mayor

Clarence J. Jones
Chairman

One City Hall Square
Boston, MA 02101
TEL (617) 725-4300
FAX (617) 567-8818

VIA TELECOPIER AND FIRST CLASS MAIL

August 28, 1992

John Mahoney, President
John Mahoney Construction Co., Inc.
25 Bryant Avenue
Milton, MA 02186
Telecopier No. (617) 696-3215

Paul R. Devon, Esq.
Peabody & Arnold
50 Rowes Wharf
Boston, MA 02100
Telecopier No. (617) 951-2125

St. Paul Mercury Insurance Company
c/o St. Paul-Seaboard Insurance
One Memorial Drive
Cambridge, MA 02140
Telecopier No. (617) 225-2565
Attn: Sharon M. Nazzaro, Associates

RE: Charlestown Street Reconstruction Contract: Combined Contract Nos. V-2, V-4, W-4 and
X-2: Charlestown, Boston, MA Notice of Default

Dear Messrs. Devon and Mahoney and Ms. Nazzaro:

Notice is hereby given by the Boston Redevelopment Authority ("BRA") that John Mahoney Construction Company ("Mahoney Construction") is in substantial breach of the terms and conditions of the contract in connection with the above captioned project. The breach of contract arises from Mahoney Construction's abandonment of the job site for the second time in less than a week. Mahoney Construction is hereby found in default of its obligations to the BRA under the contract in its entirety. Please be advised that this Notice is being sent jointly to Mahoney Construction, St. Paul Mercury Insurance Company ("St. Paul Insurance") and the local counsel to St. Paul Insurance, Paul R. Devon, Esquire of Peabody & Arnold. Further, demand is hereby made on St. Paul Insurance to meet its obligations under the performance bond to satisfactorily complete the project.

The BRA's obligation to the people of Charlestown that this project be completed on a timely and competent basis requires a prompt response. Accordingly, the BRA will require that a replacement contractor be secured by the bonding company within seven (7) days.

Respectfully submitted,

Paul L. Barrett

Paul L. Barrett
Director

1 City Hall Square
Boston, MA 02201-1001

RE: Principal:	John Mahoney Construction Co., Inc.
Supply:	St. Paul & Family Insurance Company
Contract:	Boston Redevelopment Authority
Project:	Charlestown, MA
Bond No:	See CR 1001

Dear Sir or Madam:

The undersigned represents St. Paul Family Insurance Company ("St. Paul"), the parent and participating bond surety for John Mahoney Construction Company, Inc. ("Mahoney Construction") with regard to the above-referenced construction project. It is our understanding from St. Paul that Mahoney Construction has advised St. Paul that it is financially unable to proceed with the contract for the above-referenced project or to pay the subcontractors claims for payment of its subcontractors and suppliers. In a connection of these circumstances and others, St. Paul is being advised in actual or potential losses under its parent and participating bonds furnished for this project.

We are presently investigating the facts concerning this matter and have entered into discussions with representatives of Mahoney Construction to determine the best resolution to Mahoney Construction's financial problems. As of this time, however, no further action will be taken by St. Paul, except to advise the subcontractors and suppliers of the situation and to request that they suspend work on the project until the matter is resolved. St. Paul's rights of subrogation and by virtue St. Paul is protect the interests under the bonds furnished for this project.

PRABODY & ARNOLD**COUNSELLORS AT LAW****80 ROWEN WHARF****BOSTON, MASSACHUSETTS 02110**

TELEX 886187

TELEPHONE (617) 551-8100

TELESCOPIER 551-8100

Direct Dial Number

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**BY TELESCOPIER****August 27, 1992**

Kevin Morrison, Esquire
Boston Redevelopment Authority
1 City Hall Square
Boston, MA 02201-1007

RE: Principal:	John Mahoney Construction Co., Inc.
Surety:	St. Paul Mercury Insurance Company
Obligee:	Boston Redevelopment Authority
Project:	Charlestown, MA
Bond No:	400 JK 1805

Dear Sir or Madam:

The undersigned represents St. Paul Mercury Insurance Company ("St. Paul"), the payment and performance bond Surety for John Mahoney Construction Company, Inc. ("Mahoney Construction") with regard to the above-referenced construction Project. It is our understanding from St. Paul that Mahoney Construction has admitted to St. Paul that it is financially unable to proceed with its contract for the above-referenced Project or to pay the outstanding claims for payment of its subcontractors and suppliers. As a consequence of these circumstances and events, St. Paul is being exposed to actual or potential losses under its payment and performance bonds furnished for this Project.

We are presently investigating the facts concerning this matter and have entered into discussions with representatives of Mahoney Construction to determine the best resolution to Mahoney Construction's financial problems. As of this time, however, we hereby demand, on behalf of St. Paul, that no further contract funds be released under the above-referenced Project without the written consent and direction of St. Paul. This request is being made on the basis of and to protect St. Paul's rights of subrogation and to enable St. Paul to protect its interests under its bonds furnished for this Project.

BOSTON
REDEVELOPMENT
AUTHORITY

Raymond L. Flynn
Mayor

Clarence J. Jones
Chairman

One City Hall Square
Boston, MA 02201
TEL (617) 722-4300
FAX (617) 367-5916

September 10, 1992

VIA TELECOPIER AND FIRST CLASS MAIL

The Middlesex Corporation
17 Progress Avenue
Chelmsford, MA 01824
ATTN: David Skerritt, V.P.
Telecopier No. (508) 256-6092

Re: Charlestown Street Reconstruction Project; Combined Contract
Nos. V-2, V-4, W-4 and X-2 (the "Contract"), Emergency,
Safety-Related Workforce; Memorandum of Understanding

Dear Mr. Skerritt:

As discussed with John Reddy of your office through Bryant Associates, the Boston Redevelopment Authority ("BRA") requires emergency construction services to address safety-related concerns on the above Contract. The BRA has notified John Mahoney Construction Company, Inc. ("Mahoney Construction") that the BRA considers it in default of its Contract and simultaneously the contractor has notified its bonding company of such. In turn, the bond surety, St. Paul Mercury Insurance Company ("St. Paul Insurance"), has taken over control of any contract expenditures and has agreed to reimburse properly documented costs for emergency related matters. Further, Mahoney Construction has verbally informed the BRA Engineer, Bryant Associates, that emergency forces or other forces would no longer be on the job.

Therefore, the BRA, by this letter, is issuing you a Notice to Proceed as of this date to begin emergency safety-related work on the above Contract as directed by the BRA's Engineer. As discussed with John Reddy, it is agreed The Middlesex Corporation ("Middlesex") work will be funded by St. Paul Insurance with BRA approval, and tracked on a time and materials ("T&M") basis. As on Contract W-4M, Bryant Associates will be the BRA Engineer, will identify the work to be performed, and document your work by the actual time and materials. Billings by Middlesex will be bi-weekly.

The basic understanding of the T&M methods will be as follows:

THE MIDDLESEX CORPORATION

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Equipment:	Actual time per Rental Rate Blue Book Dataquest (Dunn & Bradstreet). Hourly rate based on "monthly rate" (176 hrs/month).
Personnel:	Actual time (regular and standard overtime differential). Minimum wage rate of classification, as stipulated in Contract W-4M plus burden. Middlesex's burden is 66.2% (including Workers Compensation, Insurance, Taxes, etc.) NOTE: Foreman's rate is \$0.75 more than the maximum classification rate.
Material:	As invoiced by supplier, e.g., gravel.
Subcontractor(s)	As invoiced by subcontractor, e.g., water tap.
15% Markup	Profit and Overhead to be placed upon the above items.
Mobilization (Demobilization)	To be tracked per T&M to allow for emergency delivery of equipment, etc.

The above essentially constitutes the provisions for extra work as currently under Contract W-4M. The BRA would look toward Middlesex to provide the appropriate Contractor Insurance and Certifications.

The BRA will require a listing of contract personnel for emergency communication.

The BRA foresees the potential need for emergency forces to attend to emergency conditions such as but not limited to, flooding related to rain or leaking waterlines, to attend to a settled trench, dressing or installing sidewalks, installing drainage, or maintaining such safety items as drums with flashers and cones.

The BRA would expect a normal reaction time to a situation to be within 24 hours, and under emergency conditions to be immediate.

The duration of this emergency workforce status will be determined by the time required to establish a full-term substitute Contractor by St. Paul Insurance and the BRA.

THE MIDDLESEX CORPORATION
September 10, 1992
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Please sign one copy of this Memorandum of Understanding as your concurrence to the above and return the same to this office.

BOSTON REDEVELOPMENT AUTHORITY

by *William Barbato*
Paul Reavis
Assistant Director for Planning
and Development

Kevin J. Morrison
Kevin J. Morrison
Deputy General Counsel

THE MIDDLESEX CORPORATION

David Skerritt
David Skerritt, Vice President

DATE: 9/11/92

cc: Bryant Associates, Inc.
John Reddy, The Middlesex Corporation

